

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHANNON MACK and LINDSEY
FARROW, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

CASE NO. 2:22-cv-01310-JCC

**STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

- 4 (a). Documents containing financial information, medical information, or
5 personal identifying information of the named plaintiffs, putative class
6 members, or any other person, except where such financial information,
7 medical information, or personal identifying information is publicly
8 available. Such information includes, but is not limited to, addresses,
9 telephone numbers, social security numbers, credit card account
10 information, bank account information, other financial account information,
11 dates of birth, drivers’ license numbers, purchase history, and other similar
12 personal information;
- 13 (b). Documents containing, representing, or constituting lists, descriptions, or
14 other groupings of the producing party’s customers or potential customers.
- 15 (c). Documents containing, representing, constituting, or relating to lists of
16 putative class members or potential putative class members;
- 17 (d). Documents containing, representing, constituting, or relating to the
18 financial books and records of the producing party and any financial
19 information pertaining to sales, revenues, costs, expenses, or profits and
20 losses of the producing party;
- 21 (e). Non-public documents containing, representing, constituting, or relating to
22 the producing party’s policies, procedures, handbooks, and practices, which
23 the producing party, or any third party from which the producing party has
24 obtained the documents, maintains and treats as confidential pursuant to
25 legitimate business interests;
26

- 1 (f). Non-public Documents containing, representing, constituting, or relating to
2 the producing party's non-public contracts, agreements, and
3 communications with third parties which the producing party, or any third
4 party from which the producing party has obtained the documents,
5 maintains and treats as confidential pursuant to legitimate business
6 interests;
- 7 (h). Any information or documents which the producing party is obligated to
8 keep confidential by contract or state, federal, or other law;
- 9 (i). Any non-public aspect of the producing party's computer information
10 systems, general hardware and software specifications, handbooks, and
11 related instructions and training information which the producing party, or
12 any third party from which the producing party has obtained the documents,
13 maintains and treats as confidential pursuant to legitimate business
14 interests;
- 15 (j). Non-public test data and results, analyses, certificates, protocols, product
16 specifications, manufacturing practices, reports, processes, requirements,
17 standards, records (including but not limited to batch records and master
18 manufacturing records), and any other similar documents, information, or
19 tangible things, relating to or concerning Solimo Melatonin, which the
20 producing party, or any third party from which the producing party has
21 obtained the documents, maintains and treats as confidential pursuant to
22 legitimate business interests;
- 23 (k). Non-public documents or tangible things regarding or relating to the
24 formulation, development, composition, or manufacture of Solimo
25 Melatonin, which the producing party, or any third party from which the
26

1 producing party has obtained the documents, maintains and treats as
2 confidential pursuant to legitimate business interests; and

- 3 (l). Documents or tangible things containing, representing, constituting, or
4 relating to any non-public information concerning sales, distribution,
5 marketing, labeling, advertising, pricing, forecasting, research &
6 development, regulatory requirements and inspections, manufacturing,
7 consumer demands and expectations, consumer surveys, and competitor
8 analyses, or any other similar subject matters, relating to or concerning
9 Solimo Melatonin, which the producing party, or any third party from which
10 the producing party has obtained the documents, maintains and treats as
11 confidential pursuant to legitimate business interests.

12 3. SCOPE

13 The protections conferred by this agreement cover not only Confidential material (as
14 defined above), but also (1) any information copied or extracted from Confidential material; (2) all
15 copies, excerpts, summaries, or compilations of Confidential material; and (3) any testimony,
16 conversations, or presentations by parties or their counsel that might reveal Confidential material.
17 Further, the protections conferred by this Protective Order apply to both Confidential material
18 produced by a party and Confidential material produced by a non-party in connection with this
19 litigation.

20 However, the protections conferred by this agreement do not cover information that is in
21 the public domain or becomes part of the public domain through trial or otherwise.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use Confidential material that is disclosed
24 or produced by another party or by a non-party in connection with this case only for prosecuting,
25 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
26 categories of persons and under the conditions described in this agreement. Confidential material

1 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
2 that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
4 by the court or permitted in writing by the designating party, a receiving party may disclose any
5 Confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as employees
7 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the
9 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
10 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
11 designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for this
13 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
14 except to the extent that the expert or consultant currently works for a competitor of Amazon with
15 respect to selling melatonin supplements. In that case, the parties must meet and confer about
16 provision of Confidential material to such expert or consultant;

17 (d) the court, court personnel, and court reporters and their staff;

18 (e) any mediator or arbitrator engaged by the Parties;

19 (f) copy or imaging services retained by counsel to assist in the duplication of
20 Confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any Confidential material to third parties and to immediately
22 return all originals and copies of any Confidential material;

23 (g) during their depositions, employee or representative witnesses of the
24 producing party, as reasonably necessary for the litigation;

25 (h) during their depositions, and as to documents originating from the
26 manufacturers of Solimo Melatonin only, employee or representative witnesses of such

1 manufacturers, as reasonably necessary for the litigation, or employee or representative witnesses
2 of Amazon, as reasonably necessary for the litigation, unless the parties agree that a particular
3 document or material produced is for Attorney's Eyes Only and is so designated;

4 (i) during their depositions, other witnesses in the action to whom disclosure
5 is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
6 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal Confidential material must
8 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this agreement;

10 (j) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information.

12 4.3 Filing Confidential Material. Before filing Confidential material or discussing or
13 referencing such material in court filings, the filing party shall confer with the designating party,
14 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
15 remove the confidential designation, whether the document can be redacted, or whether a motion
16 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
17 designating party must identify the basis for sealing the specific confidential information at issue,
18 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
19 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
20 the standards that will be applied when a party seeks permission from the court to file material
21 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
22 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
23 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
24 the strong presumption of public access to the Court's files.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this agreement must take
4 care to limit any such designation to specific material that qualifies under the appropriate
5 standards. The designating party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify, so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
12 and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
14 protection do not qualify for protection, the designating party must promptly notify all other parties
15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this
17 agreement (see, *e.g.*, sections 5.2(b) and 5.3 below), or as otherwise stipulated or ordered,
18 disclosure of discovery material that qualifies for protection under this agreement must be clearly
19 so designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
23 Confidential material.

24 (b) Testimony given in deposition or in other pretrial proceedings: the parties
25 and any participating non-parties must identify on the record, during the deposition or other pretrial
26 proceeding, whether the testimony contains protected material. Subsequently, that party or non-

1 party must, within fourteen days after receiving the transcript of the deposition or other pretrial
2 proceeding, designate portions of the transcript, or exhibits thereto, as Confidential and notify all
3 other parties and participating non-parties of those designations. All parties and participating non-
4 parties must treat the testimony in its entirety as Confidential until the fourteen days has expired
5 and thereafter must treat designated portions accordingly. If a party or non-party desires to protect
6 Confidential information at trial, the issue should be addressed during the pre-trial conference.

7 (c) Other tangible items: the producing party must affix in a prominent place
8 on the exterior of the container or containers in which the information or item is stored the word
9 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
10 the producing party, to the extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
12 designate qualified information or items does not, standing alone, waive the designating party’s
13 right to secure protection under this agreement for such material. Upon timely receiving notice
14 from the producing party of a failure to designate information or items as Confidential, the
15 receiving party shall treat that newly-designated information or items as Confidential subject to
16 the terms of this Stipulation; provided that the Confidential designation of such information or
17 items may be removed by agreement of the parties or order of the Court.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
22 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
26 regarding confidential designations without court involvement. Any motion regarding confidential

designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a receiving party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” the receiving party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately: (a) notify in writing the designating party of the unauthorized disclosures,
5 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
6 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
7 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
8 Bound” that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
14 is not intended to modify whatever procedure may be established in an e-discovery order or
15 agreement that provides for production without prior privilege review. The parties agree to the
16 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all Confidential material to the producing party, including all copies, extracts
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
21 destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
25 product, even if such materials contain Confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: June 5, 2023

/s/ Jonas B. Jacobson

Dovel & Luner, LLP
Attorneys for Plaintiff

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7 DATED: June 5, 2023

/s/ David A. Bateman

K&L Gates LLP
Attorneys for Defendant

9 PURSUANT TO STIPULATION, IT IS SO ORDERED

10 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
11 documents, electronically stored information (ESI) or information, whether inadvertent or
12 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
13 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
14 documents, including the attorney-client privilege, attorney work-product protection, or any other
15 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
16 protection allowed by Fed. R. Evid. 502(d). The provisions of Federal R. Evid. 502(b) do not
17 apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a
18 review of documents, ESI or information (including metadata) for relevance, responsiveness
19 and/or segregation of privileged and/or protected information before production. Information
20 produced in discovery that is protected as privileged or work product shall be immediately returned
21 to the producing party.

22 DATED this 6th day of June 2023.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Mack v. Amazon.com, Inc.*, (No. 2:22-cv-01310-JCC (W.D. Wash)). I agree to comply with
and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____